

1 **TITLE II—FUNCTIONAL**
2 **REGULATION**
3 **Subtitle A—Brokers and Dealers**

4 **SEC. 201. DEFINITION OF BROKER.**

5 Section 3(a)(4) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

7 “(4) BROKER.—

8 “(A) IN GENERAL.—The term ‘broker’
9 means any person engaged in the business of
10 effecting transactions in securities for the ac-
11 count of others.

12 “(B) EXCEPTION FOR CERTAIN BANK AC-
13 TIVITIES.—A bank shall not be considered to be
14 a broker because the bank engages in any of
15 the following activities under the conditions de-
16 scribed:

17 “(i) THIRD PARTY BROKERAGE AR-
18 RANGEMENTS.—The bank enters into a
19 contractual or other arrangement with a
20 broker or dealer registered under this title
21 under which the broker or dealer offers
22 brokerage services on or off the premises
23 of the bank if—

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1 “(I) such broker or dealer is
2 clearly identified as the person per-
3 forming the brokerage services;

4 “(II) the broker or dealer per-
5 forms brokerage services in an area
6 that is clearly marked and, to the ex-
7 tent practicable, physically separate
8 from the routine deposit-taking activi-
9 ties of the bank;

10 “(III) any materials used by the
11 bank to advertise or promote generally
12 the availability of brokerage services
13 under the contractual or other ar-
14 rangement clearly indicate that the
15 brokerage services are being provided
16 by the broker or dealer and not by the
17 bank;

18 “(IV) any materials used by the
19 bank to advertise or promote generally
20 the availability of brokerage services
21 under the contractual or other ar-
22 rangement are in compliance with the
23 Federal securities laws before dis-
24 tribution;

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1 “(V) bank employees (other than
2 associated persons of a broker or deal-
3 er who are qualified pursuant to the
4 rules of a self-regulatory organization)
5 perform only clerical or ministerial
6 functions in connection with broker-
7 age transactions including scheduling
8 appointments with the associated per-
9 sons of a broker or dealer, except that
10 bank employees may forward cus-
11 tomer funds or securities and may de-
12 scribe in general terms the range of
13 investment vehicles available from the
14 bank and the broker or dealer under
15 the contractual or other arrangement;

16 “(VI) bank employees do not di-
17 rectly receive incentive compensation
18 for any brokerage transaction unless
19 such employees are associated persons
20 of a broker or dealer and are qualified
21 pursuant to the rules of a self-regu-
22 latory organization, except that the
23 bank employees may receive com-
24 pensation for the referral of any cus-
25 tomer if the compensation is a nomi-

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1 nal one-time cash fee of a fixed dollar
2 amount and the payment of the fee is
3 not contingent on whether the referral
4 results in a transaction;

5 “(VII) such services are provided
6 by the broker or dealer on a basis in
7 which all customers which receive any
8 services are fully disclosed to the
9 broker or dealer;

10 “(VIII) the bank does not carry
11 a securities account of the customer
12 except in a customary custodian or
13 trustee capacity; and

14 “(IX) the bank, broker, or dealer
15 informs each customer that the bro-
16 kerage services are provided by the
17 broker or dealer and not by the bank
18 and that the securities are not depos-
19 its or other obligations of the bank,
20 are not guaranteed by the bank, and
21 are not insured by the Federal De-
22 posit Insurance Corporation.

23 “(ii) TRUST ACTIVITIES.—The bank—

24 “(I) effects transactions in a
25 trustee capacity and is primarily com-

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1 compensated based on an annual fee (pay-
2 able on a monthly, quarterly, or other
3 basis) or percentage of assets under
4 management, or both; or

5 “(II) effects transactions in a fi-
6 duciary capacity in its trust depart-
7 ment or other department that is reg-
8 ularly examined by bank examiners
9 for compliance with fiduciary prin-
10 ciples and standards and—

11 “(aa) is primarily com-
12 pensated on the basis of either
13 an annual fee (payable on a
14 monthly, quarterly, or other
15 basis), a percentage of assets
16 under management, or both, and
17 does not receive brokerage com-
18 missions or other similar remu-
19 nation based on effecting trans-
20 actions in securities, other than
21 the cost incurred by the bank in
22 connection with executing securi-
23 ties transactions for fiduciary
24 customers; and

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1 “(bb) does not publicly so-
2 licit brokerage business, other
3 than by advertising that it effects
4 transactions in securities in con-
5 junction with advertising its
6 other trust activities.

7 “(iii) PERMISSIBLE SECURITIES
8 TRANSACTIONS.—The bank effects trans-
9 actions in—

10 “(I) commercial paper, bankers
11 acceptances, or commercial bills;

12 “(II) exempted securities;

13 “(III) qualified Canadian govern-
14 ment obligations as defined in section
15 5136 of the Revised Statutes, in con-
16 formity with section 15C of this title
17 and the rules and regulations there-
18 under, or obligations of the North
19 American Development Bank; or

20 “(IV) any standardized, credit
21 enhanced debt security issued by a
22 foreign government pursuant to the
23 March 1989 plan of then Secretary of
24 the Treasury Brady, used by such for-

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1 eign government to retire outstanding
2 commercial bank loans.

3 “(iv) CERTAIN STOCK PURCHASE
4 PLANS.—

5 “(I) IN GENERAL.—The bank ef-
6 fects transactions, as part of its trans-
7 fer agency activities, in—

8 “(aa) the securities of an is-
9 suer as part of any pension, re-
10 tirement, profit-sharing, bonus,
11 thrift, savings, incentive, or other
12 similar benefit plan for the em-
13 ployees of that issuer or its sub-
14 sidiaries, if the bank does not so-
15 licit transactions or provide in-
16 vestment advice with respect to
17 the purchase or sale of securities
18 in connection with the plan;

19 “(bb) the securities of an is-
20 suer as part of that issuer’s divi-
21 dend reinvestment plan, if the
22 bank does not—

23 “(AA) solicit trans-
24 actions or provide invest-
25 ment advice with respect to

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1 the purchase or sale of secu-
2 rities in connection with the
3 plan;

4 “(BB) net shareholders’
5 buy and sell orders, other
6 than for programs for odd-
7 lot holders or plans reg-
8 istered with the Commission;
9 or

10 “(cc) the securities of an is-
11 suer as part of a plan or program
12 for the purchase or sale of that
13 issuer’s shares, if—

14 “(AA) the bank does
15 not solicit transactions or
16 provide investment advice
17 with respect to the purchase
18 or sale of securities in con-
19 nection with the plan or pro-
20 gram;

21 “(BB) the bank does
22 not net shareholders’ buy
23 and sell orders, other than
24 for programs for odd-lot

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1 holders or plans registered
2 with the Commission; and

3 “(CC) the bank’s com-
4 pensation for such plan or
5 program consists of adminis-
6 tration fees, or flat or
7 capped per order processing
8 fees, or both, plus the cost
9 incurred by the bank in con-
10 nection with executing secu-
11 rities transactions resulting
12 from such plan or program.

13 “(II) PERMISSIBLE DELIVERY OF
14 MATERIALS.—The exception to being
15 considered a broker for a bank en-
16 gaged in activities described in sub-
17 clause (I) will not be affected by a
18 bank’s delivery of written or electronic
19 plan materials to employees of the is-
20 suer, shareholders of the issuer, or
21 members of affinity groups of the is-
22 suer, so long as such materials are—

23 “(aa) comparable in scope or
24 nature to that permitted by the
25 Commission as of the date of the

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1 enactment of the Financial Serv-
2 ices Act of 1998; or

3 “(bb) otherwise permitted by
4 the Commission.

5 “(v) SWEEP ACCOUNTS.—The bank
6 effects transactions as part of a program
7 for the investment or reinvestment of bank
8 deposit funds into any no-load, open-end
9 management investment company reg-
10 istered under the Investment Company Act
11 of 1940 that holds itself out as a money
12 market fund.

13 “(vi) AFFILIATE TRANSACTIONS.—
14 The bank effects transactions for the ac-
15 count of any affiliate of the bank (as de-
16 fined in section 2 of the Bank Holding
17 Company Act of 1956) other than—

18 “(I) a registered broker or deal-
19 er; or

20 “(II) an affiliate that is engaged
21 in merchant banking, as described in
22 section 6(c)(3)(H) of the Bank Hold-
23 ing company Act of 1956.

24 “(vii) PRIVATE SECURITIES OFFER-
25 INGS.—The bank—

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1 “(I) effects sales as part of a pri-
2 mary offering of securities not involv-
3 ing a public offering, pursuant to sec-
4 tion 3(b), 4(2), or 4(6) of the Securi-
5 ties Act of 1933 or the rules and reg-
6 ulations issued thereunder;

7 “(II) at any time after one year
8 after the date of enactment of the Fi-
9 nancial Services Act of 1998, is not
10 affiliated with a broker or dealer that
11 has been registered for more than one
12 year; and

13 “(III) effects transactions exclu-
14 sively with qualified investors.

15 “(viii) SAFEKEEPING AND CUSTODY
16 ACTIVITIES.—

17 “(I) IN GENERAL.—The bank, as
18 part of customary banking activities—

19 “(aa) provides safekeeping
20 or custody services with respect
21 to securities, including the exer-
22 cise of warrants and other rights
23 on behalf of customers;

24 “(bb) facilitates the transfer
25 of funds or securities, as a custo-

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1 dian or a clearing agency, in con-
2 nection with the clearance and
3 settlement of its customers'
4 transactions in securities;

5 “(cc) effects securities lend-
6 ing or borrowing transactions
7 with or on behalf of customers as
8 part of services provided to cus-
9 tomers pursuant to division (aa)
10 or (bb) or invests cash collateral
11 pledged in connection with such
12 transactions; or

13 “(dd) holds securities
14 pledged by a customer to another
15 person or securities subject to
16 purchase or resale agreements in-
17 volving a customer, or facilitates
18 the pledging or transfer of such
19 securities by book entry or as
20 otherwise provided under applica-
21 ble law.

22 “(II) EXCEPTION FOR CARRYING
23 BROKER ACTIVITIES.—The exception
24 to being considered a broker for a
25 bank engaged in activities described in

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1 subclause (I) shall not apply if the
2 bank, in connection with such activi-
3 ties, acts in the United States as a
4 carrying broker (as such term, and
5 different formulations thereof, are
6 used in section 15(c)(3) and the rules
7 and regulations thereunder) for any
8 broker or dealer, unless such carrying
9 broker activities are engaged in with
10 respect to government securities (as
11 defined in paragraph (42) of this sub-
12 section).

13 “(ix) BANKING PRODUCTS.—The bank
14 effects transactions in traditional banking
15 products, as defined in section 206(a) of
16 the Financial Services Act of 1998.

17 “(x) DE MINIMIS EXCEPTION.—The
18 bank effects, other than in transactions re-
19 ferred to in clauses (i) through (ix), not
20 more than 500 transactions in securities in
21 any calendar year, and such transactions
22 are not effected by an employee of the
23 bank who is also an employee of a broker
24 or dealer.

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1 “(C) BROKER DEALER EXECUTION.—The
2 exception to being considered a broker for a
3 bank engaged in activities described in clauses
4 (ii), (iv), and (viii) of subparagraph (B) shall
5 not apply if the activities described in such pro-
6 visions result in the trade in the United States
7 of any security that is a publicly traded security
8 in the United States, unless—

9 “(i) the bank directs such trade to a
10 registered or broker dealer for execution;

11 “(ii) the trade is a cross trade or
12 other substantially similar trade of a secu-
13 rity that—

14 “(I) is made by the bank or be-
15 tween the bank and an affiliated fidu-
16 ciary; and

17 “(II) is not in contravention of
18 fiduciary principles established under
19 applicable Federal or State law; or

20 “(iii) the trade is conducted in some
21 other manner permitted under rules, regu-
22 lations, or orders as the Commission may
23 prescribe or issue.

24 “(D) NO EFFECT OF BANK EXEMPTIONS
25 ON OTHER COMMISSION AUTHORITY.—The ex-

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1 ception to being considered a broker for a bank
2 engaged in activities described in subpara-
3 graphs (B) and (C) shall not affect the commis-
4 sion's authority under any other provision of
5 this Act or any other securities law.

6 “(E) FIDUCIARY CAPACITY.—For purposes
7 of subparagraph (B)(ii), the term ‘fiduciary ca-
8 pacity’ means—

9 “(i) in the capacity as trustee, execu-
10 tor, administrator, registrar of stocks and
11 bonds, transfer agent, guardian, assignee,
12 receiver, or custodian under a uniform gift
13 to minor act, or as an investment adviser
14 if the bank receives a fee for its investment
15 advice;

16 “(ii) in any capacity in which the
17 bank possesses investment discretion on
18 behalf of another; or

19 “(iii) in any other similar capacity.

20 “(F) EXCEPTION FOR ENTITIES SUBJECT
21 TO SECTION 15(e).—The term ‘broker’ does not
22 include a bank that—

23 “(i) was, immediately prior to the en-
24 actment of the Financial Services Act of
25 1998, subject to section 15(e); and

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1 “(ii) is subject to such restrictions
2 and requirements as the Commission con-
3 siders appropriate.”.

4 **SEC. 202. DEFINITION OF DEALER.**

5 Section 3(a)(5) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

7 “(5) DEALER.—

8 “(A) IN GENERAL.—The term ‘dealer’
9 means any person engaged in the business of
10 buying and selling securities for such person’s
11 own account through a broker or otherwise.

12 “(B) EXCEPTION FOR PERSON NOT EN-
13 GAGED IN THE BUSINESS OF DEALING.—The
14 term ‘dealer’ does not include a person that
15 buys or sells securities for such person’s own
16 account, either individually or in a fiduciary ca-
17 pacity, but not as a part of a regular business.

18 “(C) EXCEPTION FOR CERTAIN BANK AC-
19 TIVITIES.—A bank shall not be considered to be
20 a dealer because the bank engages in any of the
21 following activities under the conditions de-
22 scribed:

23 “(i) PERMISSIBLE SECURITIES TRANS-
24 ACTIONS.—The bank buys or sells—

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1 “(I) commercial paper, bankers
2 acceptances, or commercial bills;

3 “(II) exempted securities;

4 “(III) qualified Canadian govern-
5 ment obligations as defined in section
6 5136 of the Revised Statutes of the
7 United States, in conformity with sec-
8 tion 15C of this title and the rules
9 and regulations thereunder, or obliga-
10 tions of the North American Develop-
11 ment Bank; or

12 “(IV) any standardized, credit
13 enhanced debt security issued by a
14 foreign government pursuant to the
15 March 1989 plan of then Secretary of
16 the Treasury Brady, used by such for-
17 eign government to retire outstanding
18 commercial bank loans.

19 “(ii) INVESTMENT, TRUSTEE, AND FI-
20 DUCIARY TRANSACTIONS.—The bank buys
21 or sells securities for investment pur-
22 poses—

23 “(I) for the bank; or

24 “(II) for accounts for which the
25 bank acts as a trustee or fiduciary.

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1 “(iii) ASSET-BACKED TRANS-
2 ACTIONS.—The bank engages in the issu-
3 ance or sale to qualified investors, through
4 a grantor trust or otherwise, of securities
5 backed by or representing an interest in
6 notes, drafts, acceptances, loans, leases, re-
7 ceivables, other obligations, or pools of any
8 such obligations predominantly originated
9 by the bank, or a syndicate of banks of
10 which the bank is a member, or an affiliate
11 of any such bank other than a broker or
12 dealer.

13 “(iv) BANKING PRODUCTS.—The bank
14 buys or sells traditional banking products,
15 as defined in section 206(a) of the Finan-
16 cial Services Act of 1998.

17 “(v) DERIVATIVE INSTRUMENTS.—
18 The bank issues, buys, or sells any deriva-
19 tive instrument to which the bank is a
20 party—

21 “(I) to or from a corporation,
22 limited liability company, or partner-
23 ship that owns and invests on a dis-
24 cretionary basis, not less than
25 \$10,000,000 in investments, or to or

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1 from a qualified investor, except that
2 if the instrument provides for the de-
3 livery of one or more securities (other
4 than a derivative instrument or gov-
5 ernment security), the transaction
6 shall be effected with or through a
7 registered broker or dealer; or

8 “(II) to or from other persons,
9 except that if the derivative instru-
10 ment provides for the delivery of one
11 or more securities (other than a deriv-
12 ative instrument or government secu-
13 rity), or is a security (other than a
14 government security), the transaction
15 shall be effected with or through a
16 registered broker or dealer; or

17 “(III) to or from any person if
18 the instrument is neither a security
19 nor provides for the delivery of one or
20 more securities (other than a deriva-
21 tive instrument).”.

1 **SEC. 203. REGISTRATION FOR SALES OF PRIVATE SECURI-**
2 **TIES OFFERINGS.**

3 Section 15A of the Securities Exchange Act of 1934
4 (15 U.S.C. 78o-3) is amended by inserting after sub-
5 section (i) the following new subsection:

6 “(j) REGISTRATION FOR SALES OF PRIVATE SECURI-
7 TIES OFFERINGS.—A registered securities association
8 shall create a limited qualification category for any associ-
9 ated person of a member who effects sales as part of a
10 primary offering of securities not involving a public offer-
11 ing, pursuant to section 3(b), 4(2), or 4(6) of the Securi-
12 ties Act of 1933 and the rules and regulations thereunder,
13 and shall deem qualified in such limited qualification cat-
14 egory, without testing, any bank employee who, in the six
15 month period preceding the date of enactment of this Act,
16 engaged in effecting such sales.”.

17 **SEC. 204. SALES PRACTICES AND COMPLAINT PROCE-**
18 **DURES.**

19 Section 18 of the Federal Deposit Insurance Act is
20 amended by adding at the end the following new sub-
21 section:

22 “(s) SALES PRACTICES AND COMPLAINT PROCE-
23 DURES WITH RESPECT TO BANK SECURITIES ACTIVI-
24 TIES.—

25 “(1) REGULATIONS REQUIRED.—Each Federal
26 banking agency shall prescribe and publish in final

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1 form, not later than 6 months after the date of en-
2 actment of the Financial Services Act of 1998, regu-
3 lations which apply to retail transactions, solicita-
4 tions, advertising, or offers of any security by any
5 insured depository institution or any affiliate thereof
6 other than a registered broker or dealer or an indi-
7 vidual acting on behalf of such a broker or dealer
8 who is an associated person of such broker or dealer.
9 Such regulations shall include—

10 “(A) requirements that sales practices
11 comply with just and equitable principles of
12 trade that are substantially similar to the Rules
13 of Fair Practice of the National Association of
14 Securities Dealers; and

15 “(B) requirements prohibiting (i) condi-
16 tioning an extension of credit on the purchase
17 or sale of a security; and (ii) any conduct lead-
18 ing a customer to believe that an extension of
19 credit is conditioned upon the purchase or sale
20 of a security.

21 “(2) PROCEDURES REQUIRED.—The appro-
22 priate Federal banking agencies shall jointly estab-
23 lish procedures and facilities for receiving and expe-
24 ditiously processing complaints against any bank or
25 employee of a bank arising in connection with the

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1 purchase or sale of a security by a customer, includ-
2 ing a complaint alleging a violation of the regula-
3 tions prescribed under paragraph (1), but excluding
4 a complaint involving an individual acting on behalf
5 of such a broker or dealer who is an associated per-
6 son of such broker or dealer. The use of any such
7 procedures and facilities by such a customer shall be
8 at the election of the customer. Such procedures
9 shall include provisions to refer a complaint alleging
10 fraud to the Securities and Exchange Commission
11 and appropriate State securities commissions.

12 “(3) REQUIRED ACTIONS.—The actions re-
13 quired by the Federal banking agencies under para-
14 graph (2) shall include the following:

15 “(A) establishing a group, unit, or bureau
16 within each such agency to receive such com-
17 plaints;

18 “(B) developing and establishing proce-
19 dures for investigating, and permitting cus-
20 tomers to investigate, such complaints;

21 “(C) developing and establishing proce-
22 dures for informing customers of the rights
23 they may have in connection with such com-
24 plaints;

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1 “(D) developing and establishing proce-
2 dures that allow customers a period of at least
3 6 years to make complaints and that do not re-
4 quire customers to pay the costs of the proceed-
5 ing; and

6 “(E) developing and establishing proce-
7 dures for resolving such complaints, including
8 procedures for the recovery of losses to the ex-
9 tent appropriate.

10 “(4) CONSULTATION AND JOINT REGULA-
11 TIONS.—The Federal banking agencies shall consult
12 with each other and prescribe joint regulations pur-
13 suant to paragraphs (1) and (2), after consultation
14 with the Securities and Exchange Commission.

15 “(5) PROCEDURES IN ADDITION TO OTHER
16 REMEDIES.—The procedures and remedies provided
17 under this subsection shall be in addition to, and not
18 in lieu of, any other remedies available under law.

19 “(6) DEFINITION.—As used in this sub-
20 section—

21 “(A) the term ‘security’ has the meaning
22 provided in section 3(a)(10) of the Securities
23 Exchange Act of 1934;

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1 “(B) the term ‘registered broker or dealer’
2 has the meaning provided in section 3(a)(48) of
3 such Act; and

4 “(C) the term ‘associated person’ has the
5 meaning provided in section 3(a)(18) of such
6 Act.”.

7 **SEC. 205. INFORMATION SHARING.**

8 Section 18 of the Federal Deposit Insurance Act is
9 amended by adding at the end the following new sub-
10 section:

11 “(t) RECORDKEEPING REQUIREMENTS.—

12 “(1) REQUIREMENTS.—Each appropriate Fed-
13 eral banking agency, after consultation with and
14 consideration of the views of the Commission, shall
15 establish recordkeeping requirements for banks rely-
16 ing on exceptions contained in paragraphs (4) and
17 (5) of section 3(a) of the Securities Exchange Act of
18 1934. Such recordkeeping requirements shall be suf-
19 ficient to demonstrate compliance with the terms of
20 such exceptions and be designed to facilitate compli-
21 ance with such exceptions. Each appropriate Federal
22 banking agency shall make any such information
23 available to the Commission upon request.

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1 “(2) DEFINITIONS.—As used in this subsection
2 the term ‘Commission’ means the Securities and Ex-
3 change Commission.”.

4 **SEC. 206. DEFINITION AND TREATMENT OF BANKING PROD-**
5 **UCTS.**

6 (a) DEFINITION OF TRADITIONAL BANKING PROD-
7 UCT.—

8 (1) IN GENERAL.—For purposes of paragraphs
9 (4) and (5) of section 3(a) of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 78c(a)(4), (5)), the
11 term ‘traditional banking product’ means—

12 (A) a deposit account, savings account,
13 certificate of deposit, or other deposit instru-
14 ment issued by a bank;

15 (B) a banker’s acceptance;

16 (C) a letter of credit issued or loan made
17 by a bank;

18 (D) a debit account at a bank arising from
19 a credit card or similar arrangement;

20 (E) a participation in a loan which the
21 bank or an affiliate of the bank (other than a
22 broker or dealer) funds, participates in, or owns
23 that is sold—

24 (i) to qualified investors; or

25 (ii) to other persons that—

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1 “(I) have the opportunity to re-
2 view and assess any material informa-
3 tion, including information regarding
4 the borrower’s creditworthiness; and

5 “(II) based on such factors as fi-
6 nancial sophistication, net worth, and
7 knowledge and experience in financial
8 matters, have the capability to evalu-
9 ate the information available, as de-
10 termined under generally applicable
11 banking standards or guidelines; or

12 (F) any derivative instrument, whether or
13 not individually negotiated, involving or relating
14 to—

15 (i) foreign currencies, except options
16 on foreign currencies that trade on a na-
17 tional securities exchange;

18 (ii) interest rates, except interest rate
19 derivative instruments (I) that are based
20 on a security; or (II) that provide for the
21 delivery of one or more securities; or

22 (iii) commodities, other rates, indices,
23 or other assets, except derivative instru-
24 ments that are securities or that provide
25 for the delivery of one or more securities.

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1 (2) CLASSIFICATION LIMITED.—Classification
2 of a particular product as a traditional banking
3 product pursuant to this subsection shall not be con-
4 strued as finding or implying that such product is
5 or is not a security for any purpose under the securi-
6 ties laws, or is or is not an account, agreement, con-
7 tract, or transaction for any purpose under the Com-
8 modity Exchange Act.

9 (3) DEFINITIONS.—For purposes of this sub-
10 section—

11 (A) the term “bank” has the meaning pro-
12 vided in section 3(a)(6) of the Securities Ex-
13 change Act of 1934 (15 U.S.C. 78c(a)(6);

14 (B) the term “qualified investor” has the
15 meaning provided in section 3(a)(55) of such
16 Act; and

17 (C) the term “Federal banking agency”
18 has the meaning provided in section 3(z) of the
19 Federal Deposit Insurance Act (12 U.S.C.
20 1813(z)).

21 (b) TREATMENT OF NEW BANKING PRODUCTS FOR
22 PURPOSES OF BROKER/DEALER REQUIREMENTS.—Sec-
23 tion 15 of the Securities Exchange Act of 1934 (15 U.S.C.
24 78o) is amended by adding at the end the following new
25 subsection:

1 “(i) RULEMAKING TO EXTEND REQUIREMENTS TO
2 NEW BANKING PRODUCTS.—

3 “(1) LIMITATION.—The Commission shall
4 not—

5 “(A) require a bank to register as a broker
6 or dealer under this section because the bank
7 engages in any transaction in, or buys or sells,
8 a new banking product; or

9 “(B) bring an action against a bank for a
10 failure to comply with a requirement described
11 in subparagraph (A);

12 unless the Commission has imposed such require-
13 ment by rule or regulation issued in accordance with
14 this section.

15 “(2) CRITERIA FOR RULEMAKING.—The Com-
16 mission shall not impose a requirement under para-
17 graph (1) of this subsection with respect to any new
18 banking product unless the Commission determines
19 that—

20 “(A) the new banking product is a secu-
21 rity; and

22 “(B) imposing such requirement is nec-
23 essary or appropriate in the public interest and
24 for the protection of investors, consistent with
25 the requirements of section 3(f).

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1 “(3) NEW BANKING PRODUCT.—For purposes
2 of this subsection, the term ‘new banking product’
3 means a product that—

4 “(A) was not subjected to regulation by
5 the Commission as a security prior to the date
6 of enactment of this subsection; and

7 “(B) is not a traditional banking product,
8 as such term is defined in section 206(a) of the
9 Financial Services Act of 1998.

10 “(4) CONSULTATION.—In promulgating rules
11 under this subsection, the Commission shall consult
12 with and consider the views of the appropriate regu-
13 latory agencies concerning the proposed rule and the
14 impact on the banking industry.”.

15 **SEC. 207. DERIVATIVE INSTRUMENT AND QUALIFIED IN-**
16 **VESTOR DEFINED.**

17 Section 3(a) of the Securities Exchange Act of 1934
18 is amended by adding at the end the following new para-
19 graphs:

20 “(54) DERIVATIVE INSTRUMENT.—

21 “(A) DEFINITION.—The term ‘derivative
22 instrument’ means any individually negotiated
23 contract, agreement, warrant, note, or option
24 that is based, in whole or in part, on the value
25 of, any interest in, or any quantitative measure

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1 or the occurrence of any event relating to, one
2 or more commodities, securities, currencies, in-
3 terest or other rates, indices, or other assets,
4 but does not include a traditional banking prod-
5 uct, as defined in section 206(a) of the Finan-
6 cial Services Act of 1998.

7 “(B) CLASSIFICATION LIMITED.— Classi-
8 fication of a particular contract as a derivative
9 instrument pursuant to this paragraph shall not
10 be construed as finding or implying that such
11 instrument is or is not a security for any pur-
12 pose under the securities laws, or is or is not
13 an account, agreement, contract, or transaction
14 for any purpose under the Commodity Ex-
15 change Act.

16 “(55) QUALIFIED INVESTOR.—

17 “(A) DEFINITION.—For purposes of this
18 title and section 206(a)(1)(E) of the Financial
19 Services Act of 1998, the term ‘qualified inves-
20 tor’ means—

21 “(i) any investment company reg-
22 istered with the Commission under section
23 8 of the Investment Company Act of 1940;

24 “(ii) any issuer eligible for an exclu-
25 sion from the definition of investment com-

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pany pursuant to section 3(c)(7) of the Investment Company Act of 1940;

“(iii) any bank (as defined in paragraph (6) of this subsection), savings and loan association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

“(iv) any small business investment company licensed by the United States Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958;

“(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank,

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savings and loan association, insurance company, or registered investment adviser;

“(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

“(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

“(viii) any associated person of a broker or dealer other than a natural person; or

“(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978).

“(B) ADDITIONAL QUALIFICATIONS DEFINED.—For purposes of paragraphs (4)(B)(vii) and (5)(C)(iii) of this subsection, and section 206(a)(1)(E) of the Financial Services Act of 1998, the term ‘qualified investor’ also means—

“(i) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than \$10,000,000 in investments;

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1 “(ii) any natural person who owns
2 and invests on a discretionary basis, not
3 less than \$10,000,000 in investments;

4 “(iii) any government or political sub-
5 division, agency, or instrumentality of a
6 government who owns and invests on a dis-
7 cretionary basis not less than \$50,000,000
8 in investments; or

9 “(iv) any multinational or supra-
10 national entity or any agency or instru-
11 mentality thereof.

12 “(C) ADDITIONAL AUTHORITY.—The Com-
13 mission may, by rule or order, define a ‘quali-
14 fied investor’ as any other person, other than a
15 natural person, taking into consideration such
16 factors as the person’s financial sophistication,
17 net worth, and knowledge and experience in fi-
18 nancial matters.”.

19 **SEC. 208. GOVERNMENT SECURITIES DEFINED.**

20 Section 3(a)(42) of the Securities Exchange Act of
21 1934 (15 U.S.C. 78c(a)(42)) is amended—

22 (1) by striking “or” at the end of subparagraph
23 (C);

24 (2) by striking the period at the end of sub-
25 paragraph (D) and inserting “; or”; and

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1 (3) by adding at the end the following new sub-
2 paragraph:

3 “(E) for purposes of section 15C as ap-
4 plied to a bank, a qualified Canadian govern-
5 ment obligation as defined in section 5136 of
6 the Revised Statutes.”.

7 **SEC. 209. EFFECTIVE DATE.**

8 This subtitle shall take effect at the end of the 270-
9 day period beginning on the date of the enactment of this
10 Act.

11 **Subtitle B—Bank Investment**
12 **Company Activities**

13 **SEC. 211. CUSTODY OF INVESTMENT COMPANY ASSETS BY**
14 **AFFILIATED BANK.**

15 (a) MANAGEMENT COMPANIES.—Section 17(f) of the
16 Investment Company Act of 1940 (15 U.S.C. 80a-17(f))
17 is amended—

18 (1) by redesignating paragraphs (1), (2), and
19 (3) as subparagraphs (A), (B), and (C), respectively;

20 (2) by striking “(f) Every registered” and in-
21 serting the following:

22 “(f) CUSTODY OF SECURITIES.—

23 “(1) Every registered”;

24 (3) by redesignating the 2d, 3d, 4th, and 5th
25 sentences of such subsection as paragraphs (2)

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1 through (5), respectively, and indenting the left mar-
2 gin of such paragraphs appropriately; and

3 (4) by adding at the end the following new
4 paragraph:

5 “(6) The Commission may adopt rules and reg-
6 ulations, and issue orders, consistent with the pro-
7 tection of investors, prescribing the conditions under
8 which a bank, or an affiliated person of a bank, ei-
9 ther of which is an affiliated person, promoter, orga-
10 nizer, or sponsor of, or principal underwriter for, a
11 registered management company may serve as custo-
12 dian of that registered management company.”.

13 (b) UNIT INVESTMENT TRUSTS.—Section 26 of the
14 Investment Company Act of 1940 (15 U.S.C. 80a-26) is
15 amended—

16 (1) by redesignating subsections (b) through (e)
17 as subsections (c) through (f), respectively; and

18 (2) by inserting after subsection (a) the follow-
19 ing new subsection:

20 “(b) The Commission may adopt rules and regula-
21 tions, and issue orders, consistent with the protection of
22 investors, prescribing the conditions under which a bank,
23 or an affiliated person of a bank, either of which is an
24 affiliated person of a principal underwriter for, or deposi-

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1 tor of, a registered unit investment trust, may serve as
2 trustee or custodian under subsection (a)(1).”.

3 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)
4 of the Investment Company Act of 1940 (15 U.S.C. 80a–
5 35(a)) is amended—

6 (1) in paragraph (1), by striking “or” at the
7 end;

8 (2) in paragraph (2), by striking the period at
9 the end and inserting “; or”; and

10 (3) by inserting after paragraph (2) the follow-
11 ing:

12 “(3) as custodian.”.

13 **SEC. 212. LENDING TO AN AFFILIATED INVESTMENT COM-**
14 **PANY.**

15 Section 17(a) of the Investment Company Act of
16 1940 (15 U.S.C. 80a–17(a)) is amended—

17 (1) by striking “or” at the end of paragraph
18 (2);

19 (2) by striking the period at the end of para-
20 graph (3) and inserting “; or”; and

21 (3) by adding at the end the following new
22 paragraph:

23 “(4) to loan money or other property to such
24 registered company, or to any company controlled by
25 such registered company, in contravention of such

1 rules, regulations, or orders as the Commission may
2 prescribe or issue consistent with the protection of
3 investors.”.

4 **SEC. 213. INDEPENDENT DIRECTORS.**

5 (a) IN GENERAL.—Section 2(a)(19)(A) of the Invest-
6 ment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)(A))
7 is amended—

8 (1) by striking clause (v) and inserting the fol-
9 lowing new clause:

10 “(v) any person or any affiliated per-
11 son of a person (other than a registered in-
12 vestment company) that, at any time dur-
13 ing the 6-month period preceding the date
14 of the determination of whether that per-
15 son or affiliated person is an interested
16 person, has executed any portfolio trans-
17 actions for, engaged in any principal trans-
18 actions with, or distributed shares for—

19 “(I) the investment company,

20 “(II) any other investment com-
21 pany having the same investment ad-
22 viser as such investment company or
23 holding itself out to investors as a re-
24 lated company for purposes of invest-
25 ment or investor services, or

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1 “(III) any account over which the
2 investment company’s investment ad-
3 viser has brokerage placement discre-
4 tion,”;

5 (2) by redesignating clause (vi) as clause (vii);
6 and

7 (3) by inserting after clause (v) the following
8 new clause:

9 “(vi) any person or any affiliated per-
10 son of a person (other than a registered in-
11 vestment company) that, at any time dur-
12 ing the 6-month period preceding the date
13 of the determination of whether that per-
14 son or affiliated person is an interested
15 person, has loaned money or other prop-
16 erty to—

17 “(I) the investment company,

18 “(II) any other investment com-
19 pany having the same investment ad-
20 viser as such investment company or
21 holding itself out to investors as a re-
22 lated company for purposes of invest-
23 ment or investor services, or

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1 “(III) any account for which the
2 investment company’s investment ad-
3 viser has borrowing authority,”.

4 (b) CONFORMING AMENDMENT.—Section
5 2(a)(19)(B) of the Investment Company Act of 1940 (15
6 U.S.C. 80a-2(a)(19)(B)) is amended—

7 (1) by striking clause (v) and inserting the fol-
8 lowing new clause:

9 “(v) any person or any affiliated per-
10 son of a person (other than a registered in-
11 vestment company) that, at any time dur-
12 ing the 6-month period preceding the date
13 of the determination of whether that per-
14 son or affiliated person is an interested
15 person, has executed any portfolio trans-
16 actions for, engaged in any principal trans-
17 actions with, or distributed shares for—

18 “(I) any investment company for
19 which the investment adviser or prin-
20 cipal underwriter serves as such,

21 “(II) any investment company
22 holding itself out to investors, for pur-
23 poses of investment or investor serv-
24 ices, as a company related to any in-
25 vestment company for which the in-

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1 investment adviser or principal under-
2 writer serves as such, or

3 “(III) any account over which the
4 investment adviser has brokerage
5 placement discretion,”;

6 (2) by redesignating clause (vi) as clause (vii);
7 and

8 (3) by inserting after clause (v) the following
9 new clause:

10 “(vi) any person or any affiliated per-
11 son of a person (other than a registered in-
12 vestment company) that, at any time dur-
13 ing the 6-month period preceding the date
14 of the determination of whether that per-
15 son or affiliated person is an interested
16 person, has loaned money or other prop-
17 erty to—

18 “(I) any investment company for
19 which the investment adviser or prin-
20 cipal underwriter serves as such,

21 “(II) any investment company
22 holding itself out to investors, for pur-
23 poses of investment or investor serv-
24 ices, as a company related to any in-
25 vestment company for which the in-

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1 vestment adviser or principal under-
2 writer serves as such, or

3 “(III) any account for which the
4 investment adviser has borrowing au-
5 thority,”.

6 (c) AFFILIATION OF DIRECTORS.—Section 10(c) of
7 the Investment Company Act of 1940 (15 U.S.C. 80a-
8 10(c)) is amended by striking “bank, except” and insert-
9 ing “bank (together with its affiliates and subsidiaries) or
10 any one bank holding company (together with its affiliates
11 and subsidiaries) (as such terms are defined in section 2
12 of the Bank Holding Company Act of 1956), except”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect at the end of the 1-year period
15 beginning on the date of enactment of this subtitle.

16 **SEC. 214. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

17 Section 35(a) of the Investment Company Act of
18 1940 (15 U.S.C. 80a-34(a)) is amended to read as fol-
19 lows:

20 “(a) MISREPRESENTATION OF GUARANTEES.—

21 “(1) IN GENERAL.—It shall be unlawful for any
22 person, issuing or selling any security of which a
23 registered investment company is the issuer, to rep-
24 resent or imply in any manner whatsoever that such
25 security or company—

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1 “(A) has been guaranteed, sponsored, rec-
2 ommended, or approved by the United States,
3 or any agency, instrumentality or officer of the
4 United States;

5 “(B) has been insured by the Federal De-
6 posit Insurance Corporation; or

7 “(C) is guaranteed by or is otherwise an
8 obligation of any bank or insured depository in-
9 stitution.

10 “(2) DISCLOSURES.—Any person issuing or
11 selling the securities of a registered investment com-
12 pany that is advised by, or sold through, a bank
13 shall prominently disclose that an investment in the
14 company is not insured by the Federal Deposit In-
15 surance Corporation or any other government agen-
16 cy. The Commission may adopt rules and regula-
17 tions, and issue orders, consistent with the protec-
18 tion of investors, prescribing the manner in which
19 the disclosure under this paragraph shall be pro-
20 vided.

21 “(3) DEFINITIONS.—The terms ‘insured deposi-
22 tory institution’ and ‘appropriate Federal banking
23 agency’ have the meaning given to such terms in
24 section 3 of the Federal Deposit Insurance Act.”.

1 **SEC. 215. DEFINITION OF BROKER UNDER THE INVEST-**
2 **MENT COMPANY ACT OF 1940.**

3 Section 2(a)(6) of the Investment Company Act of
4 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-
5 lows:

6 “(6) The term ‘broker’ has the same meaning
7 as in the Securities Exchange Act of 1934, except
8 that such term does not include any person solely by
9 reason of the fact that such person is an underwriter
10 for one or more investment companies.”.

11 **SEC. 216. DEFINITION OF DEALER UNDER THE INVEST-**
12 **MENT COMPANY ACT OF 1940.**

13 Section 2(a)(11) of the Investment Company Act of
14 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-
15 lows:

16 “(11) The term ‘dealer’ has the same meaning
17 as in the Securities Exchange Act of 1934, but does
18 not include an insurance company or investment
19 company.”.

20 **SEC. 217. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
21 **TION OF INVESTMENT ADVISER FOR BANKS**
22 **THAT ADVISE INVESTMENT COMPANIES.**

23 (a) INVESTMENT ADVISER.—Section 202(a)(11) of
24 the Investment Advisers Act of 1940 (15 U.S.C. 80b-
25 2(a)(11)) is amended in subparagraph (A), by striking
26 “investment company” and inserting “investment com-

pany, except that the term ‘investment adviser’ includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser”.

(b) SEPARATELY IDENTIFIABLE DEPARTMENT OR DIVISION.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end the following:

“(26) The term ‘separately identifiable department or division’ of a bank means a unit—

“(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank’s investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

“(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such

1 unit's own facilities or the facilities of the bank,
2 and such records are so maintained or other-
3 wise accessible as to permit independent exam-
4 ination and enforcement by the Commission of
5 this Act or the Investment Company Act of
6 1940 and rules and regulations promulgated
7 under this Act or the Investment Company Act
8 of 1940.”.

9 **SEC. 218. DEFINITION OF BROKER UNDER THE INVEST-**
10 **MENT ADVISERS ACT OF 1940.**

11 Section 202(a)(3) of the Investment Advisers Act of
12 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as fol-
13 lows:

14 “(3) The term ‘broker’ has the same meaning
15 as in the Securities Exchange Act of 1934.”.

16 **SEC. 219. DEFINITION OF DEALER UNDER THE INVEST-**
17 **MENT ADVISERS ACT OF 1940.**

18 Section 202(a)(7) of the Investment Advisers Act of
19 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as fol-
20 lows:

21 “(7) The term ‘dealer’ has the same meaning as
22 in the Securities Exchange Act of 1934, but does
23 not include an insurance company or investment
24 company.”.

1 **SEC. 220. INTERAGENCY CONSULTATION.**

2 The Investment Advisers Act of 1940 (15 U.S.C.
3 80b-1 et seq.) is amended by inserting after section 210
4 the following new section:

5 **“SEC. 210A. CONSULTATION.**

6 “(a) EXAMINATION RESULTS AND OTHER INFORMA-
7 TION.—

8 “(1) The appropriate Federal banking agency
9 shall provide the Commission upon request the re-
10 sults of any examination, reports, records, or other
11 information to which such agency may have access
12 with respect to the investment advisory activities—

13 “(A) of any—

14 “(i) bank holding company,

15 “(ii) bank, or

16 “(iii) separately identifiable depart-
17 ment or division of a bank,

18 that is registered under section 203 of this title;

19 and

20 “(B) in the case of a bank holding com-
21 pany or bank that has a subsidiary or a sepa-
22 rately identifiable department or division reg-
23 istered under that section, of such bank or bank
24 holding company.

25 “(2) The Commission shall provide to the ap-
26 propriate Federal banking agency upon request the

1 results of any examination, reports, records, or other
2 information with respect to the investment advisory
3 activities of any bank holding company, bank, or
4 separately identifiable department or division of a
5 bank, any of which is registered under section 203
6 of this title.

7 “(b) EFFECT ON OTHER AUTHORITY.—Nothing in
8 this section shall limit in any respect the authority of the
9 appropriate Federal banking agency with respect to such
10 bank holding company, bank, or department or division
11 under any provision of law.

12 “(c) DEFINITION.—For purposes of this section, the
13 term ‘appropriate Federal banking agency’ shall have the
14 same meaning as in section 3 of the Federal Deposit In-
15 surance Act.”.

16 **SEC. 221. TREATMENT OF BANK COMMON TRUST FUNDS.**

17 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of
18 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is
19 amended by striking “or any interest or participation in
20 any common trust fund or similar fund maintained by a
21 bank exclusively for the collective investment and reinvest-
22 ment of assets contributed thereto by such bank in its ca-
23 pacity as trustee, executor, administrator, or guardian”
24 and inserting “or any interest or participation in any com-
25 mon trust fund or similar fund that is excluded from the

1 definition of the term ‘investment company’ under section
2 3(c)(3) of the Investment Company Act of 1940”.

3 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
4 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934
5 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-
6 lows:

7 “(iii) any interest or participation in any
8 common trust fund or similar fund that is ex-
9 cluded from the definition of the term ‘invest-
10 ment company’ under section 3(c)(3) of the In-
11 vestment Company Act of 1940;”.

12 (c) INVESTMENT COMPANY ACT OF 1940.—Section
13 3(c)(3) of the Investment Company Act of 1940 (15
14 U.S.C. 80a-3(c)(3)) is amended by inserting before the
15 period the following: “, if—

16 “(A) such fund is employed by the bank
17 solely as an aid to the administration of trusts,
18 estates, or other accounts created and main-
19 tained for a fiduciary purpose;

20 “(B) except in connection with the ordi-
21 nary advertising of the bank’s fiduciary serv-
22 ices, interests in such fund are not—

23 “(i) advertised; or

24 “(ii) offered for sale to the general
25 public; and

1 “(C) fees and expenses charged by such
2 fund are not in contravention of fiduciary prin-
3 ciples established under applicable Federal or
4 State law”.

5 **SEC. 222. INVESTMENT ADVISERS PROHIBITED FROM HAV-**
6 **ING CONTROLLING INTEREST IN REG-**
7 **ISTERED INVESTMENT COMPANY.**

8 Section 15 of the Investment Company Act of 1940
9 (15 U.S.C. 80a-15) is amended by adding at the end the
10 following new subsection:

11 “(g) CONTROLLING INTEREST IN INVESTMENT COM-
12 PANY PROHIBITED.—

13 “(1) IN GENERAL.—If an investment adviser to
14 a registered investment company, or an affiliated
15 person of that investment adviser, holds a control-
16 ling interest in that registered investment company
17 in a trustee or fiduciary capacity, such person
18 shall—

19 “(A) if it holds the shares in a trustee or
20 fiduciary capacity with respect to any employee
21 benefit plan subject to the Employee Retirement
22 Income Security Act of 1974, transfer the
23 power to vote the shares of the investment com-
24 pany through to another person acting in a fi-
25 duciary capacity with respect to the plan who is

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1 not an affiliated person of that investment ad-
2 viser or any affiliated person thereof; or

3 “(B) if it holds the shares in a trustee or
4 fiduciary capacity with respect to any person or
5 entity other than an employee benefit plan sub-
6 ject to the Employee Retirement Income Secu-
7 rity Act of 1974—

8 “(i) transfer the power to vote the
9 shares of the investment company through
10 to—

11 “(I) the beneficial owners of the
12 shares;

13 “(II) another person acting in a
14 fiduciary capacity who is not an affili-
15 ated person of that investment adviser
16 or any affiliated person thereof; or

17 “(III) any person authorized to
18 receive statements and information
19 with respect to the trust who is not an
20 affiliated person of that investment
21 adviser or any affiliated person there-
22 of;

23 “(ii) vote the shares of the investment
24 company held by it in the same proportion

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1 as shares held by all other shareholders of
2 the investment company; or

3 “(iii) vote the shares of the invest-
4 ment company as otherwise permitted
5 under such rules, regulations, or orders as
6 the Commission may prescribe or issue
7 consistent with the protection of investors.

8 “(2) EXEMPTION.—Paragraph (1) shall not
9 apply to any investment adviser to a registered in-
10 vestment company, or any affiliated person of that
11 investment adviser, that holds shares of the invest-
12 ment company in a trustee or fiduciary capacity if
13 that registered investment company consists solely of
14 assets held in such capacities.

15 “(3) SAFE HARBOR.—No investment adviser to
16 a registered investment company or any affiliated
17 person of such investment adviser shall be deemed to
18 have acted unlawfully or to have breached a fidu-
19 ciary duty under State or Federal law solely by rea-
20 son of acting in accordance with clause (i), (ii), or
21 (iii) of paragraph (1)(B).”.

22 **SEC. 223. CONFORMING CHANGE IN DEFINITION.**

23 Section 2(a)(5) of the Investment Company Act of
24 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking
25 “(A) a banking institution organized under the laws of the

1 United States” and inserting “(A) a depository institution
2 (as defined in section 3 of the Federal Deposit Insurance
3 Act) or a branch or agency of a foreign bank (as such
4 terms are defined in section 1(b) of the International
5 Banking Act of 1978)”.

6 **SEC. 224. CONFORMING AMENDMENT.**

7 Section 202 of the Investment Advisers Act of 1940
8 (15 U.S.C. 80b-2) is amended by adding at the end the
9 following new subsection:

10 “(c) CONSIDERATION OF PROMOTION OF EFFI-
11 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
12 Whenever pursuant to this title the Commission is en-
13 gaged in rulemaking and is required to consider or deter-
14 mine whether an action is necessary or appropriate in the
15 public interest, the Commission shall also consider, in ad-
16 dition to the protection of investors, whether the action
17 will promote efficiency, competition, and capital forma-
18 tion.”.

19 **SEC. 225. EFFECTIVE DATE.**

20 This subtitle shall take effect 90 days after the date
21 of the enactment of this Act.

1 **Subtitle C—Securities and Ex-**
2 **change Commission Supervision**
3 **of Investment Bank Holding**
4 **Companies**

5 **SEC. 231. SUPERVISION OF INVESTMENT BANK HOLDING**
6 **COMPANIES BY THE SECURITIES AND EX-**
7 **CHANGE COMMISSION.**

8 (a) AMENDMENT.—Section 17 of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78q) is amended—

10 (1) by redesignating subsection (i) as subsection
11 (l); and

12 (2) by inserting after subsection (h) the follow-
13 ing new subsections:

14 “(i) INVESTMENT BANK HOLDING COMPANIES.—

15 “(1) ELECTIVE SUPERVISION OF AN INVEST-
16 MENT BANK HOLDING COMPANY NOT HAVING A
17 BANK OR SAVINGS ASSOCIATION AFFILIATE.—

18 “(A) IN GENERAL.—An investment bank
19 holding company that is not—

20 “(i) an affiliate of a wholesale finan-
21 cial institution, an insured bank (other
22 than an institution described in subpara-
23 graph (D), (F), or (G) of section 2(c)(2),
24 or held under section 4(f), of the Bank

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1 Holding Company Act of 1956), or a sav-
2 ings association,

3 “(ii) a foreign bank, foreign company,
4 or company that is described in section
5 8(a) of the International Banking Act of
6 1978, or

7 “(iii) a foreign bank that controls, di-
8 rectly or indirectly, a corporation chartered
9 under section 25A of the Federal Reserve
10 Act,

11 may elect to become supervised by filing with
12 the Commission a notice of intention to become
13 supervised, pursuant to subparagraph (B) of
14 this paragraph. Any investment bank holding
15 company filing such a notice shall be supervised
16 in accordance with this section and comply with
17 the rules promulgated by the Commission appli-
18 cable to supervised investment bank holding
19 companies.

20 “(B) NOTIFICATION OF STATUS AS A SU-
21 PERVISED INVESTMENT BANK HOLDING COM-
22 PANY.—An investment bank holding company
23 that elects under subparagraph (A) to become
24 supervised by the Commission shall file with the
25 Commission a written notice of intention to be-

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1 come supervised by the Commission in such
2 form and containing such information and doc-
3 uments concerning such investment bank hold-
4 ing company as the Commission, by rule, may
5 prescribe as necessary or appropriate in fur-
6 therance of the purposes of this section. Unless
7 the Commission finds that such supervision is
8 not necessary or appropriate in furtherance of
9 the purposes of this section, such supervision
10 shall become effective 45 days after receipt of
11 such written notice by the Commission or with-
12 in such shorter time period as the Commission,
13 by rule or order, may determine.

14 “(2) ELECTION NOT TO BE SUPERVISED BY
15 THE COMMISSION AS AN INVESTMENT BANK HOLD-
16 ING COMPANY.—

17 “(A) VOLUNTARY WITHDRAWAL.—A su-
18 pervised investment bank holding company that
19 is supervised pursuant to paragraph (1) may,
20 upon such terms and conditions as the Commis-
21 sion deems necessary or appropriate, elect not
22 to be supervised by the Commission by filing a
23 written notice of withdrawal from Commission
24 supervision. Such notice shall not become effec-
25 tive until one year after receipt by the Commis-

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1 sion, or such shorter or longer period as the
2 Commission deems necessary or appropriate to
3 ensure effective supervision of the material
4 risks to the supervised investment bank holding
5 company and to the affiliated broker or dealer,
6 or to prevent evasion of the purposes of this
7 section.

8 “(B) DISCONTINUATION OF COMMISSION
9 SUPERVISION.—If the Commission finds that
10 any supervised investment bank holding com-
11 pany that is supervised pursuant to paragraph
12 (1) is no longer in existence or has ceased to be
13 an investment bank holding company, or if the
14 Commission finds that continued supervision of
15 such a supervised investment bank holding com-
16 pany is not consistent with the purposes of this
17 section, the Commission may discontinue the
18 supervision pursuant to a rule or order, if any,
19 promulgated by the Commission under this sec-
20 tion.

21 “(3) SUPERVISION OF INVESTMENT BANK
22 HOLDING COMPANIES.—

23 “(A) RECORDKEEPING AND REPORTING.—

24 “(i) IN GENERAL.—Every supervised
25 investment bank holding company and

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1 each affiliate thereof shall make and keep
2 for prescribed periods such records, furnish
3 copies thereof, and make such reports, as
4 the Commission may require by rule, in
5 order to keep the Commission informed as
6 to—

7 “(I) the company’s or affiliate’s
8 activities, financial condition, policies,
9 systems for monitoring and control-
10 ling financial and operational risks,
11 and transactions and relationships be-
12 tween any broker or dealer affiliate of
13 the supervised investment bank hold-
14 ing company; and

15 “(II) the extent to which the
16 company or affiliate has complied with
17 the provisions of this Act and regula-
18 tions prescribed and orders issued
19 under this Act.

20 “(ii) FORM AND CONTENTS.—Such
21 records and reports shall be prepared in
22 such form and according to such specifica-
23 tions (including certification by an inde-
24 pendent public accountant), as the Com-
25 mission may require and shall be provided

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1 promptly at any time upon request by the
2 Commission. Such records and reports may
3 include—

4 “(I) a balance sheet and income
5 statement;

6 “(II) an assessment of the con-
7 solidated capital of the supervised in-
8 vestment bank holding company;

9 “(III) an independent auditor’s
10 report attesting to the supervised in-
11 vestment bank holding company’s
12 compliance with its internal risk man-
13 agement and internal control objec-
14 tives; and

15 “(IV) reports concerning the ex-
16 tent to which the company or affiliate
17 has complied with the provisions of
18 this title and any regulations pre-
19 scribed and orders issued under this
20 title.

21 “(B) USE OF EXISTING REPORTS.—

22 “(i) IN GENERAL.—The Commission
23 shall, to the fullest extent possible, accept
24 reports in fulfillment of the requirements
25 under this paragraph that the supervised

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1 investment bank holding company or its af-
2 filiates have been required to provide to
3 another appropriate regulatory agency or
4 self-regulatory organization.

5 “(ii) AVAILABILITY.—A supervised in-
6 vestment bank holding company or an af-
7 filiate of such company shall provide to the
8 Commission, at the request of the Commis-
9 sion, any report referred to in clause (i).

10 “(C) EXAMINATION AUTHORITY.—

11 “(i) FOCUS OF EXAMINATION AU-
12 THORITY.—The Commission may make ex-
13 aminations of any supervised investment
14 bank holding company and any affiliate of
15 such company in order to—

16 “(I) inform the Commission re-
17 garding—

18 “(aa) the nature of the oper-
19 ations and financial condition of
20 the supervised investment bank
21 holding company and its affili-
22 ates;

23 “(bb) the financial and oper-
24 ational risks within the super-
25 vised investment bank holding

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1 company that may affect any
2 broker or dealer controlled by
3 such supervised investment bank
4 holding company; and

5 “(cc) the systems of the su-
6 pervised investment bank holding
7 company and its affiliates for
8 monitoring and controlling those
9 risks; and

10 “(II) monitor compliance with
11 the provisions of this subsection, pro-
12 visions governing transactions and re-
13 lationships between any broker or
14 dealer affiliated with the supervised
15 investment bank holding company and
16 any of the company’s other affiliates,
17 and applicable provisions of sub-
18 chapter II of chapter 53, title 31,
19 United States Code (commonly re-
20 ferred to as the ‘Bank Secrecy Act’)
21 and regulations thereunder.

22 “(ii) RESTRICTED FOCUS OF EXAMI-
23 NATIONS.—The Commission shall limit the
24 focus and scope of any examination of a

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1 supervised investment bank holding com-
2 pany to—

3 “(I) the company; and

4 “(II) any affiliate of the company
5 that, because of its size, condition, or
6 activities, the nature or size of the
7 transactions between such affiliate
8 and any affiliated broker or dealer, or
9 the centralization of functions within
10 the holding company system, could, in
11 the discretion of the Commission,
12 have a materially adverse effect on the
13 operational or financial condition of
14 the broker or dealer.

15 “(iii) DEFERENCE TO OTHER EXAMI-
16 NATIONS.—For purposes of this subpara-
17 graph, the Commission shall, to the fullest
18 extent possible, use the reports of examina-
19 tion of an institution described in subpara-
20 graph (D), (F), or (G) of section 2(c)(2),
21 or held under section 4(f), of the Bank
22 Holding Company Act of 1956 made by
23 the appropriate regulatory agency, or of a
24 licensed insurance company made by the
25 appropriate State insurance regulator.

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1 “(4) HOLDING COMPANY CAPITAL.—

2 “(A) AUTHORITY.—If the Commission
3 finds that it is necessary to adequately super-
4 vise investment bank holding companies and
5 their broker or dealer affiliates consistent with
6 the purposes of this subsection, the Commission
7 may adopt capital adequacy rules for supervised
8 investment bank holding companies.

9 “(B) METHOD OF CALCULATION.—In de-
10 veloping rules under this paragraph:

11 “(i) DOUBLE LEVERAGE.—The Com-
12 mission shall consider the use by the su-
13 pervised investment bank holding company
14 of debt and other liabilities to fund capital
15 investments in affiliates.

16 “(ii) NO UNWEIGHTED CAPITAL
17 RATIO.—The Commission shall not impose
18 under this section a capital ratio that is
19 not based on appropriate risk-weighting
20 considerations.

21 “(iii) NO CAPITAL REQUIREMENT ON
22 REGULATED ENTITIES.—The Commission
23 shall not, by rule, regulation, guideline,
24 order or otherwise, impose any capital ade-
25 quacy provision on a nonbanking affiliate

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(other than a broker or dealer) that is in compliance with applicable capital requirements of another Federal regulatory authority or State insurance authority.

“(iv) APPROPRIATE EXCLUSIONS.—

The Commission shall take full account of the applicable capital requirements of another Federal regulatory authority or State insurance regulator.

“(C) INTERNAL RISK MANAGEMENT MOD-

ELS.—The Commission may incorporate internal risk management models into its capital adequacy rules for supervised investment bank holding companies.

“(5) FUNCTIONAL REGULATION OF BANKING

AND INSURANCE ACTIVITIES OF SUPERVISED INVESTMENT BANK HOLDING COMPANIES.—The Commission shall defer to—

“(A) the appropriate regulatory agency with regard to all interpretations of, and the enforcement of, applicable banking laws relating to the activities, conduct, ownership, and operations of banks, and institutions described in subparagraph (D), (F), and (G) of section

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1 2(c)(2), or held under section 4(f), of the Bank
2 Holding Company Act of 1956; and

3 “(B) the appropriate State insurance regu-
4 lators with regard to all interpretations of, and
5 the enforcement of, applicable State insurance
6 laws relating to the activities, conduct, and op-
7 erations of insurance companies and insurance
8 agents.

9 “(6) DEFINITIONS.—For purposes of this sub-
10 section—

11 “(A) The term ‘investment bank holding
12 company’ means—

13 “(i) any person other than a natural
14 person that owns or controls one or more
15 brokers or dealers; and

16 “(ii) the associated persons of the in-
17 vestment bank holding company.

18 “(B) The term ‘supervised investment
19 bank holding company’ means any investment
20 bank holding company that is supervised by the
21 Commission pursuant to this subsection.

22 “(C) The terms ‘affiliate’, ‘bank’, ‘bank
23 holding company’, ‘company’, ‘control’, and
24 ‘savings association’ have the meanings given to

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1 those terms in section 2 of the Bank Holding
2 Company Act of 1956 (12 U.S.C. 1841).

3 “(D) The term ‘insured bank’ has the
4 meaning given to that term in section 3 of the
5 Federal Deposit Insurance Act.

6 “(E) The term ‘foreign bank’ has the
7 meaning given to that term in section 1(b)(7)
8 of the International Banking Act of 1978.

9 “(F) The terms “person associated with an
10 investment bank holding company’ and “associ-
11 ated person of an investment bank holding com-
12 pany’ means any person directly or indirectly
13 controlling, controlled by, or under common
14 control with, an investment bank holding com-
15 pany.

16 “(j) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
17 MATION.—Notwithstanding any other provision of law, the
18 Commission shall not be compelled to disclose any infor-
19 mation required to be reported under subsection (h) or
20 (i) or any information supplied to the Commission by any
21 domestic or foreign regulatory agency that relates to the
22 financial or operational condition of any associated person
23 of a broker or dealer, investment bank holding company,
24 or any affiliate of an investment bank holding company.
25 Nothing in this subsection shall authorize the Commission

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1 to withhold information from Congress, or prevent the
2 Commission from complying with a request for informa-
3 tion from any other Federal department or agency or any
4 self-regulatory organization requesting the information for
5 purposes within the scope of its jurisdiction, or complying
6 with an order of a court of the United States in an action
7 brought by the United States or the Commission. For pur-
8 poses of section 552 of title 5, United States Code, this
9 subsection shall be considered a statute described in sub-
10 section (b)(3)(B) of such section 552. In prescribing regu-
11 lations to carry out the requirements of this subsection,
12 the Commission shall designate information described in
13 or obtained pursuant to subparagraphs (A), (B), and (C)
14 of subsection (i)(5) as confidential information for pur-
15 poses of section 24(b)(2) of this title.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 3(a)(34) of the Securities Exchange
18 Act of 1934 (15 U.S.C. 78c(a)(34)) is amended by
19 adding at the end the following new subparagraphs:

20 “(H) When used with respect to an institu-
21 tion described in subparagraph (D), (F), or (G)
22 of section 2(c)(2), or held under section 4(f), of
23 the Bank Holding Company Act of 1956—

24 “(i) the Comptroller of the Currency,
25 in the case of a national bank or a bank

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1 in the District of Columbia examined by
2 the Comptroller of the Currency;

3 “(ii) the Board of Governors of the
4 Federal Reserve System, in the case of a
5 State member bank of the Federal Reserve
6 System or any corporation chartered under
7 section 25A of the Federal Reserve Act;

8 “(iii) the Federal Deposit Insurance
9 Corporation, in the case of any other bank
10 the deposits of which are insured in ac-
11 cordance with the Federal Deposit Insur-
12 ance Act; or

13 “(iv) the Commission in the case of all
14 other such institutions.”.

15 (2) Section 1112(e) of the Right to Financial
16 Privacy Act of 1978 (12 U.S.C. 3412(e)) is amend-
17 ed—

18 (A) by striking “this title” and inserting
19 “law”; and

20 (B) by inserting “, examination reports”
21 after “financial records”.

1 **Subtitle D—Study**
2 **SEC. 241. STUDY OF METHODS TO INFORM INVESTORS AND**
3 **CONSUMERS OF UNINSURED PRODUCTS.**

4 Within one year after the date of enactment of this
5 Act, the Comptroller General of the United States shall
6 submit a report to the Congress regarding the efficacy,
7 costs, and benefits of requiring that any depository insti-
8 tution that accepts federally insured deposits and that, di-
9 rectly or through a contractual or other arrangement with
10 a broker, dealer, or agent, buys from, sells to, or effects
11 transactions for retail investors in securities or consumers
12 of insurance to inform such investors and consumers
13 through the use of a logo or seal that the security or insur-
14 ance is not insured by the Federal Deposit Insurance Cor-
15 poration.